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OFFICE OF PETITIONS

In re Application of :
Goulven, Vernois :
Application No. 08/809,620 : ON PETITION
Filed: February 5, 1998 :
Title: Telescope :

This is a decision on the petition, filed October 28, 2009, which is being treated as a petition under 37 CFR 1.181, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to timely and properly respond to the Office action of April 30, 2008, which set a one (1) month shortened statutory period for reply. Accordingly, a reply was due on or before May 30, 2008. A Notice of Abandonment was mailed September 16, 2009.

Petitioner states that a timely reply was submitted on April 24, 2009, followed by a letter on April 25, 2009. The reply was faxed on April 27, 2009. Petitioner has submitted a copy of the previously mailed correspondence. It is noted that previous letters and replies were submitted on September 15, 2008, September 19, 2008, October 6, 2008, October 10, 2008 and October 24, 2008.

The Notice of Non-Compliant (Notice) mailed out April 30, 2008, which, as stated above, set forth a one-month time period for reply. On September 15, 2008, petitioner submitted a letter, which did not address the issues discussed in the Notice. On September 17, 2008, a two-month petition for extension of time was received; however, the full extension of time fee was not submitted until September 19, 2008.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, the petition for a two-month extension of time submitted in September 2008 should have been submitted no later than July 30, 2008. The petition and fee must be filed within the extended time period for reply requested in the petition. As such, on September 17, 2008, a four-month extension of time was necessary, not a two-month.

Petitioner should note that while the shortened period may be extended within the limits of the statutory 6 months period, no extension can operate to extend the time beyond the 6 months. Accordingly, with a five-month extension of time, the period for reply could have been extended to October 30, 2008, but no further.

ALTERNATIVE VENUE

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- A blank petition to revive form is enclosed for petitioner's convenience.

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: PTO/SB/64 – Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b); Privacy Act Statement